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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/664,259

09/17/2003

Thomas L. Byers

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7590

10/27/2006

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EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 10/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/664,259

Applicant(s)

BYERS, THOMAS L.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-13, 15-23 and 25-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22, 23 and 31-33 is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-13, ~~14~~ 21, 25-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities:

Page 11, line 1-4, should be changed to read --The flow of atmospheric air is facilitated by individually alternating the disclosed cover assembly 112, the heating unit 132, the fan unit 134 and the cooled air unit 170, and disclosed combinations thereof, all of which span and cover--

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 20 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 20 and 21 recites the limitation "the facilitating means" in line 2 of each claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 11-13, 15, 18, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,575,239 to Bradburn et al in view of Japanese Patent JP 07-48909 to Kubota.

Regarding Claim 1, Bradburn teaches modular animal enclosure, comprising: a housing comprising a base portion and a top portion (Bradburn Fig. 1 #100 and 200) attached to the base portion to form a sheltered interior, the housing including a door aperture (Bradburn Fig. 1 #30) to permit ingress of an animal into said interior. Bradburn teach a building (i.e. animal enclosure building) with a climate conditioning aperture (Bradburn Fig. 5 #230), but is silent on an upwardly extending flange which defines a climate conditioning aperture and a climate conditioning unit configured to be contactingly supported on a top surface of the housing. However, Kubota teaches a housing ventilator with an upwardly extending flange which defines a climate conditioning aperture to accommodate a flow of atmospheric air between the interior and exterior environment (Kubota Fig. 1 #7 flange, #3 aperture). Kubota teaches a climate conditioning unit (Kubota #17) configured to be contactingly (applicant has not claimed "directly") supported on a top surface of the housing (Kubota #4 and 2) surrounding the upwardly extending flange to facilitate the flow of atmospheric air through the climate conditioning aperture, and further configured to be subsequently removed from the housing by an upwardly directed retraction of the unit form about the flange (Kubota element #17 is capable of being removed from the flange).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Bradburn with the building teachings of Kubota at the time of the invention

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since the modification is merely an engineering design choice involving the selection of a known alternate equivalent climate conditioning location and configuration for a building structure performing the same intended function modified for the known advantage of the water proof features (Kubota #6).

Regarding Claim 2, Bradburn as modified teaches wherein the climate conditioning unit comprises a cover assembly comprising a plate member (Kubota Fig. 1 #17) having a cross-sectional area greater than the cross-sectional area of the climate conditioning aperture (Kubota Fig. 1 #3), wherein the plate member is supported by the top surface of the housing at least at one location adjacent to, and outside of, the climate conditioning aperture (Kubota Fig. 1 #21 and 6).

Regarding Claim 3, Bradburn as modified teaches a fastener which fastens the climate conditioning unit to the top surface of the housing so that the upwardly extending flange is disposed between the climate conditioning unit and the climate conditioning aperture (Kubota Fig. 1 nails).

Regarding Claim 4, Bradburn as modified teaches wherein an insertion depth of the fastener (Kubota Fig. 1 nails) *can be* (functional language i.e. "capable of") slidably adjusted to alter a cross-sectional thickness of the gap between the cover assembly and the climate conditioning aperture.

Regarding Claim 11, Bradburn as modified teaches the climate conditioning aperture is substantially rectangular in cross-sectional extent (Kubota #3 runs along the length of the roof).

Regarding Claim 12, Bradburn as modified is silent on the rectangular cross-sectional extent has a minimum dimension of at least four inches. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Bradburn at the time of the invention since the modification is merely a change in size to adjust the amount of air flow and does not present a patentably distinct limitation.

Regarding Claim 13, Bradburn as modified teaches wherein the top portion (Bradburn #200) is sized to nest within the base portion (Bradburn #100) when the top portion is inverted.

Regarding Claim 15, Bradburn as modified teaches the climate conditioning aperture is centered in the top portion over the sheltered interior of the housing (Kubota teaches the roof center at peak Fig. 1).

Regarding Claim 18, Bradburn as modified teaches a support portion and a cover portion (Kubota Fig. 1 #17 support portion; #13 cover).

Regarding Claim 26, Bradburn as modified teaches wherein the fastener extends into a non-through hole in the housing (Kubota Fig. 1 the nail that goes through elements #6 and 10 into element #2).

Regarding Claim 27, Bradburn as modified teaches the climate conditioning unit is characterized as a first climate conditioning unit (Kubota #17), but is silent on the animal enclosure further comprises a second climate conditioning unit configured for removeable attachment to the housing adjacent the climate conditioning aperture in lieu of the first climate conditioning unit so that the second climate conditioning unit is contactingly supported by the top surface of the housing at a position a selected

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distance away from the climate conditioning aperture so as to form a gap there between, the second climate conditioning unit facilitating said flow of atmospheric air through the gap and through the climate conditioning aperture to the interior. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Bradburn at the time of the invention with a second climate conditioning unit to replace the first one if the first one is broken.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,575,239 to Bradburn in view of Japanese Patent JP 07-48909 to Kubota as applied to claim 1 above, and further in view U.S. Patent No. 5,887,436 to Duddleston.

Regarding Claim 5, Bonforte as modified teaches a modular animal enclosure, but is silent on a cooled air unit in combination with a climate conditioning unit which supplies cooled air to the interior. However, Duddleston teaches a modular animal enclosure with a climate conditioning unit in combination with a cooled air unit (Duddleston #41 and #53, Col. 1 line 10-14 – climate conditioning unit; #42 – cooling unit). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Bonforte as modified by Kubota with the teachings of Duddleston at the time of the invention to provide cooling to pets in hot summer conditions as taught by Duddleston..

Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,575,239 to Bradburn in view of Japanese Patent JP 07-48909 to Kubota as applied to claim 1 above, and further in view U.S. Patent No. 3,223,018 to Tucker.

Regarding Claims 6 and 9, Bradburn as modified is silent on the climate conditioning unit comprises a fan unit which directs increased velocity ambient air through the climate conditioning aperture. However, Tucker teaches a fan unit in combination with a building climate conditioning aperture (Tucker Fig. 7 element F). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Bradburn with the teachings of Tucker for the known advantage of helping to assist the flow of air for improved circulation as taught by Tucker.

Claims 7, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,575,239 to Bradburn et al in view of Japanese Patent JP 07-48909 to Kubota and U.S. Patent No. 3,223,018 to Tucker as applied to claims 1 and 6 above, and further in view U.S. Patent No. 2,689,906 to Corbett.

Regarding Claims 7, 8 and 9, Bradburn as modified teaches a climate conditioning aperture, an animal enclosure, and a climate conditioning unit including a fan, but is silent on the climate conditioning unit comprises a heating unit which supplies heated air to the interior or the climate conditioning unit comprises a radiant heat source which directs radiant heat into the interior. However, Corbett teaches a radiant heat source (Corbett #24) in combination with a climate conditioning fan (Corbett #18) unit in

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a ceiling/roof structure of a building/enclosure. It would have been obvious to one of ordinary skill in the art to further modify the teachings of Bradburn as modified by Bonforte and Tucker with the teachings of Corbett at the time of the invention for providing heat to the structure on cold days. It is old and notoriously well-known to regulate the temperature of an both human and animal enclosures for the comfort of the occupant. Merely the selection of known radiant heating means to accomplish this comfort lever would have been obvious to one of ordinary skill, i.e. one of general knowledge. Merely cited as examples of general knowledge that it is known to regulate the temperature of an animal enclosure in order to either heat or cool the structure are U.S. Patent 6,637,374 and U.S. Patent No. 5,887,436 (applicant has not claimed how the climate conditioning unit and the heating unit are structurally combined).

Claims 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,575,239 to Bradburn et al in view of Japanese Patent JP 07-48909 to Kubota and U.S. Patent No. 3,223,018 to Tucker as applied to claims 1, 6 and 18 above, and further in view U.S. Patent No. 5,755,181 to Petkovski.

Regarding Claims 17 and 20, Bradburn as modified teaches a climate conditioning unit that operates on and off (Tucker element F), but is silent on an animal proximity sensor, which detects the presence of the animal within the interior, and wherein the climate conditioning unit operates in response to said detected presence of the animal. However, Petkovski teaches an animal proximity sensor that detects the presence of the animal with in an interior and a climate conditioning unit operates in

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response (Petkovski #44 and Col. 3 line 9). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Bradburn with the teachings of Petkovski at the time of the invention since motion sensors are old and notoriously well-known devices selected by one of ordinary skill in the art for the advantage of energy conservation

Claims 16 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,575,239 to Bradburn et al in view Japanese Patent JP 07-48909 to Kubota as applied to claim 1 and 18 above, and further in view of U.S. Patent No. 5,551,371 to Markey et al.

Regarding Claims 16 and 21, Bradburn is silent on a sensor, which detects an ambient condition, and wherein the climate conditioning unit operates in response to said detected ambient condition. However, Markey et al teaches a building enclosure with a climate conditioning aperture in the roof with a climate conditioning unit that operates in response to detected ambient conditions of a sensor (Markey #152 and Col. 5 line 7). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Bradburn with the teachings of Markey at the time of the invention for the advantage of assisting the flow of air through the enclosure for better circulation and for the energy efficient advantages of operating the fan only at desired temperatures and not continuously (i.e. energy conservation).

Claims 9 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,575,239 to Bradburn et al in view Japanese Patent JP 07-48909 to Kubota as applied to claim 1 above, and further in view of U.S. Patent No. 3,710,761 to Gregory.

Regarding Claims 9 and 25, Bradburn as modified is silent on means for allowing pivotal movement of the top portion with respect to the base portion in alternate opposing first and second directions and for impeding initiation of the pivotal movement in the opposing first and second directions. However, Gregory teaches a modular animal enclosure housing with top and bottom portions that are pivotal in alternate opposing first and second directions (Gregory Col. 1 line 48-55 and Fig. 2) and impede initiation of the pivotal movement in the opposing first and second directions (Gregory Fig. 2 element #17 attached on both sides impedes pivotal movement; applicant has not explicitly invoked 112th 6th). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Bradburn with the teachings of at the time of the invention since the modification is merely the selection of a known alternate top and bottom connection hinge selected for the known advantage of providing access to the enclosure without detaching the top portion thus for quick assembly and preventing loss of the top portion if it were detached.

Claims 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,575,239 to Bradburn in view of Japanese Patent JP 07-48909 to

Kubota and U.S. Patent No. 5,887,436 to Duddleston as applied to claims 1, 5 and 27 above, and further in view of U.S. Patent No. 2689,906 to Corbett.

Regarding Claims 28-30, Bradburn as modified teaches the climate conditioning modular animal enclosure via ventilation. Bradburn as modified by Kubota teaches an alternate location and design for ventilation of an enclosure. Bradburn as further modified by Duddleston teaches it is known to combine ventilation with air cooling device for a modular animal enclosure for summer temperatures. Bradburn as modified by Duddleston teaches that the cooling element (Duddleston #43 extends into an aperture of the top of the housing unit, but does not comprise a heat source.

However, Corbett teaches it is known to combine a climate conditioning unit for radiant heating with ventilation device. It is old and notoriously well-known to regulate the temperature of both human and animal enclosures for the comfort of the occupant. Merely the selection of known radiant heating means to accomplish this comfort level would have been obvious to one of ordinary skill, i.e. one of general knowledge. Merely cited as examples of general knowledge that it is known to regulate the temperature of an animal enclosure in order to either heat or cool the structure are U.S. Patent 6,637,374 and U.S. Patent No. 5,887,436. It would have been obvious to one of ordinary skill in the art to further modify the teachings of Bradburn with the teachings of Corbett at the time of the invention since the modification is merely the selection of a known alternate climate conditioning unit selected for the same intended use of provide environmental comfort to the occupants of an enclosure selected for use in colder climates or winter months. In other words, merely alternating between a cooling or

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heating climate conditioning unit would have been obvious to one of ordinary skill in the art at the time of the invention for a comfortable environment for summer and winter conditions. Ventilators in combination with a cooling unit and ventilators in combination with a heating unit are known and it is also known or of general knowledge in the art that animal enclosures have combined ventilators and climate conditions.

Allowable Subject Matter

Claim 22, 23, 31-33 are allowed.

Response to Arguments

Applicant's arguments with respect to claims 1-9, 11-13, 15-21, 25-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent No. 3,481,263; Japanese Patent JP59044537; and Japanese Patent JP200356.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

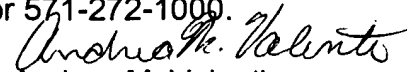
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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Andrea M. Valenti
Primary Examiner
Art Unit 3643

25 October 2006